

Implementation of 47 USC Sec 340 Significantly Viewed Stations

The prospect of satellite carriage of Significantly Viewed stations is thrilling. In part, it can bring “missing networks” to a community where a network has no affiliate in that market but a signal is available from a neighboring market. This important service has a major statutory limitation that customers must subscribe their own locals before receiving the Significantly Viewed stations.¹ The language does not say that the local network station received must be of the same network as the one carried as significantly viewed. As long as the subscriber receives at least one analog local network station under Sec 338 they can receive the appropriate analog Significantly Viewed station(s) for their community.

This logic confirms the first portion of the commission’s proposed wording of 76.54(g):

- (g) Signals of significantly viewed television broadcast stations may not be retransmitted by satellite carriers to subscribers who do not subscribe to local-into-local service pursuant to section 76.66.

340(b)(3)² does not contradict this interpretation, but it opens the door to offering a Significantly Viewed station to a customer who does not subscribe to locals. The ‘must have analog locals’ limitation in 340(b)(1) does not apply if the imported station is a network station not represented in the subscriber’s market. For example, in a market such as the Lafayette Indiana DMA where there is only one network affiliate (a CBS affiliate) under 340(b)(3) SHVERA allows the carriage of ABC, NBC and FOX affiliates that are on the significantly viewed list without regard to the fact that no CBS affiliate, including the local station, or non-affiliated station would be permitted to be carried. I believe this situation to be unfair to the local station.

In the NPRM, paragraph 48, the question was asked:

Should we require that local-into-local service be offered to subscribers in a market as a pre-condition to offering the signal of a significantly viewed station affiliated with a network that has no affiliate in the market in question?

My answer to that question is yes. Local-into-local subscription should be required before receiving ANY significantly viewed station. This would alleviate the loophole such as in Lafayette Indiana, where CBS will be the only missing network should satellite providers offer significantly viewed before offering locals in that market.

Section 340 specifically states that no satellite carrier is required to offer significantly viewed stations. However it does not seem outside the statute for the FCC to require that, where offered, significantly viewed stations be included in the “local” station package. This is fitting as the original intent of the significantly viewed list was to identify stations that should be considered “local” for cable carriage - considering them “local” for satellite carriage is simply an extension of that thought.

¹ 340(b)(1) ANALOG SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—
With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338.

² 340(b)(3) LIMITATION NOT APPLICABLE WHERE NO NETWORK AFFILIATES.—
The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

Sec 340(b)(3) Loopholes allowing Significantly Viewed without Local-in-Local

Reflecting 340(b)(3), the FCC has proposed the following exceptions in 76.54(g):

- except that a satellite carrier may retransmit a significantly viewed signal of a television broadcast station to a subscriber located in a local market in which
- (1) there is no station affiliated with the same television network as the station whose signal is significantly viewed; or
 - (2) the station affiliated with the same television network as the station whose signal is significantly viewed does not request carriage or does not grant retransmission consent pursuant to section 76.66.

The first exception is supported by 340(b)(3) as discussed above. If the answer to the question in Paragraph 48 is yes that first exception should be removed.

I do not see where the FCC is reading the authority for the second exception. The exception in 340(b)(3) defines a market where there is no network station affiliated with the same network as the Significantly Viewed station. 340(b)(3) does not define such market as described in 76.54(g)(2) -- one where a network station exists but is not carried.

Adding this language would extend the problem situation where an out-of-market station could be received without the customer subscribing to locals. However in this case, the authority seems to be missing.

Sec 340(b)(4) Waivers

The NPRM stated that the FCC has chosen not to write regulations based on 340(b)(4).³ As written, 340(b)(4) would allow carriage of an out-of-market affiliate to a customer who is not subscribing to local-in-local service. If the FCC intends to allow these waivers to overrule the local-in-local requirement, text would need to be added to the new 76.54(g) stating such - for example a third exception:

- [except that a satellite carrier may retransmit a significantly viewed signal of a television broadcast station to a subscriber located in a local market in which]*
- (3) a local network station has granted a waiver in accordance with 47 USC 340(b)(4) to the extent that such waiver(s) apply.

If the FCC follows the course of not allowing any Significantly Viewed stations to customers without local-in-local service this addition would not be needed. However, it does appear that the statutes as written support and may require the exception added above.

The Significantly Viewed List

It appears to be up to the stations involved to proofread the list. While I have read a number of complaints on online forums about "missing stations" and less polite descriptions of the list, I cannot myself prove a single station is missing. It is my understanding that the initial list and modifications have been handled by the FCC for more than 30 years. It seems likely that a number of the stations being complained about by satellite subscribers did not follow the process of getting their stations on the significantly viewed list.

This is a problem with the SHVERA statute. While it was the *intent* of congress to level the playing field between cable and satellite, the law they wrote does not completely close the gap. Congress missed the Grade B local status granted for cable carriage. New Grade B stations are key among the missing.

³ 340(b)(4) AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.—
Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

Stations are able to gain carriage on cable systems WITHOUT being on the significantly viewed list or within the DMA of the community. But under SHVERA, a station MUST be either on the list or within the DMA for the community where the subscriber has service. This makes the list much more important than its original use. If a station was able to gain carriage on cable without seeking significantly viewed status for that community they did so - not knowing that in 2005 their oversight would become a problem in reaching satellite viewers.

I believe the FCC should work to immediately rectify the situation by notifying ALL stations of the importance to satellite viewers outside their DMA that their station be on the significantly viewed list. In addition, I believe that the FCC should seek to adjust the requirements so that viewership via cable in a community within Grade B counts as viewership over-the-air of the station.

Going by the strict wording of the April 15 1976 rules provides a statistical roadblock for stations to get added to the list as only OTA viewership is counted. Instead of a simple survey that shows a percentage of households watching a threshold of hours, the strict reading would require that viewing to be OTA. This gives an unfair advantage to areas with cable penetration that would skew the viewership figures downward simply because the subscriber chose to use cable rather than an outdoor antenna. It should be noted that many satellite subscribers keep a "lifeline" level of cable in order to get stations that could be considered significantly viewed if viewed OTA. I urge the FCC to use as loose a reading as possible of the law and lean toward the *intent* of congress to level the playing field.

Regardless of if the definition can be loosened, I suggest that the FCC immediately notify and expedite the addition of as many stations that qualify to the significantly viewed list.

Unincorporated Areas and Satellite Communities

I believe that the use of Zip Codes is appropriate for defining a community. The first use of zip codes would be to extend a community beyond it's corporation limits in to unincorporated areas. The immediate affect on this would be to lighten the burden on satellite carriers of deciding if a subscriber is in a community. I live outside of the city limits, however my city and zip code is the same as residents within the city limits. Given a station that has received "significantly viewed" status for the city and not the entire county a *strict* reading of the law would say I cannot receive the station because my house is not within the city. It would be a burden on the satellite carrier to not offer me that station and explain why a house a half mile away with the same zip code can receive a channel I cannot.

The commission can ease that burden by including unincorporated areas as part of the incorporated area with the same zip code. It could further simplify definition by bundling all zip codes of an area as one entity.

Notifications

I agree with the commission's conclusions in paragraphs 59-61 of the NPRM. The notifications of satellite customers and all stations within a DMA with "imported" signal serves the intent of the law and in addition helps remind customers of what programming options are available and stations of the nature of competition in their communities. It will also help catch stations added in error before any damages are incurred. The more open the process of adding stations, the better. Notifying all stations in a market does not pose a burden (other than stationary) nor does it delay the provision of stations to customers beyond the 60 day period.

I appreciate the work ahead for the commission as this important improvement of satellite service is put in to full effect. I hope that the commission can work quickly in resolving the matters involved, and that my input has been helpful to the process. I believe the key to the success of SHVERA, especially the section being handled by this rule making, is communication. Clear rules, clearly communicated to all stations, satellite providers and interested parties. Thank you for your time.

James Bellaire
Satellite Subscriber